



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Release Number: **201311034**
Release Date: 3/15/2013
Date: December 18, 2012
U.I.L.#: 4941.04-00

Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Legend:

University =
Healthcare =
Date 1 =
Date 2 =
Person 1 =
Person 2 =
W =
X =
Y =
Z =

Dear

This letter is in reference to your letter of January 30, 2012, as amended, from your authorized representative. You are requesting rulings under § 4941 of the Internal Revenue Code with regard to two particular transactions.

Facts:

You are a corporation incorporated on Date 1. You are recognized as exempt under § 501(c)(3) and classified as a private foundation within the meaning of § 509(a). Your purposes include the making of charitable grants and awards to certain specific organizations listed in your Articles of Incorporation, as well as to other organizations or individuals for charitable, educational, scientific, religious, or literary purposes.

University is an educational organization recognized as exempt under § 501(c)(3) and is classified as a school under § 170(b)(1)(A)(ii). Healthcare is an organization recognized as exempt under § 501(c)(3) and is classified as a supporting organization under § 509(a)(3). Healthcare is a pediatric clinical care provider, performing inpatient and outpatient surgeries. It is a teaching hospital and is nationally ranked in several pediatric specialties.

Your first ruling request concerns Healthcare, which has requested a grant of \$x from you to be applied to a \$y project to build a research center for children's health issues in a "kind of partnership" with and on the grounds of University. You state that you expect to receive grant requests from University. You have unanimously approved the \$x grant, but have not disbursed funds subject to a favorable approval as part of this ruling request.

Your second request concerns your pledged grant to University in the amount of \$z to fully fund an endowed Chair. You have already disbursed to University a similar amount, but disbursed prior to the hiring of Person 1 by University.

On Date 2, University hired Person 1 to serve as its Senior Associate Vice President of Central Development Programs. Person 1 is charged with providing support to all of the development offices of the various colleges within University. Since University is a major public charity with an annual operating budget of almost \$w, you state that Person 1 is not in a position to exercise substantial influence over University's affairs or expenditures. Person 1 is the spouse of Person 2. Person 2 is a child of your founder, and is on your Board of Directors. You state that neither Person 2 nor any other disqualified person with respect to you is a director or officer of University or is otherwise in a position to exercise substantial influence of University's affairs or expenditures, and no such person is employed by University. In addition, you state that no disqualified person with respect to you is expected to directly benefit, for example to be awarded a prestigious position, due to a grant to University from you. You also state that neither Person 1 nor Person 2 is a disqualified person with respect to Healthcare.

University has provided you with an affidavit, signed and sworn to by University's Senior Vice President for Development & Alumni Relations, stating that any decision by you to grant or not to grant funds to University, or any division of University, would have no effect now or in the future on Person 1's employment, salary, compensation, or any bonuses paid by University to Person 1 and that, if you make a grant to University, Person 1 would not derive any benefit that Person 1 is not otherwise entitled to receive.

Rulings Requested:

1. A proposed grant by you of \$x to Healthcare to build a \$y facility to be built on the campus of University, which would be owned by University and partially staffed by both Healthcare and University, will not result in self-dealing (to the extent it inures to the benefit of University) as defined in § 4941 and the regulations thereunder; and
2. A pledged grant of \$z by you to University will not result in self-dealing as defined in § 4941 and the regulations thereunder.

Law:

Section 507(d)(2) defines the term "substantial contributor" with respect to a private foundation as any person who contributed or bequeathed an aggregate of more than \$5,000 to the foundation, if such amount is more than 2% of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person.

Section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation.

Section 4941(d)(1)(D) defines an act of "self-dealing" to include any direct or indirect payment of compensation (or payment or reimbursement of expenses) by a private foundation to a disqualified person.

Section 4941(d)(1)(E) defines an act of "self-dealing" to include any direct or indirect transfer to, or use by or for the benefit of, a disqualified person of the assets of a private foundation.

Section 4946(a)(1) provides, in part, that the term "disqualified person" includes, with respect to a private foundation, a person who is—

- (A) a substantial contributor to the foundation,
- (B) a foundation manager (within the meaning of subsection (b)(1)),
- (C) an owner of more than 20 percent of: (i) the total combined voting power of a corporation, (ii) the profits interest of a partnership, or (iii) the beneficial interest of a trust or unincorporated enterprise, and which is a substantial contributor to the foundation, and
- (D) a member of the family (as defined in subsection (d)) of any individual described in subparagraph (A), (B), or (C).

Section 4946(b)(1) defines the term "foundation manager" with respect to any private foundation to include an officer, director, or trustee of a foundation (or an individual having powers or responsibilities similar to those of officers, directors, or trustees of the foundation), and with respect to any act (or failure to act), the employees of the foundation having authority or responsibility with respect to such act (or failure to act).

Section 4946(d) provides that for purposes of subsection (a)(1), the family of any individual shall include only his spouse, ancestors, children, grandchildren, great grandchildren, and the spouses of children, grandchildren, and great grandchildren.

Section 53.4941(d)-2(f)(1) of the Foundation and Similar Excise Taxes Regulations provides that, in general, the transfer to, or use by or for the benefit of, a disqualified person of the income or assets of a private foundation shall constitute an act of self-dealing.

Section 53.4941(d)-2(f)(2) provides that the receipt by a disqualified person of an incidental or tenuous benefit from the use of a foundation or its income or assets will not, by itself, cause such use to be an act of self-dealing. Thus, the public recognition a person may receive, arising from the charitable activities of a private foundation to which such person is a substantial contributor, does not in itself result in an act of self-dealing since generally the benefit is incidental and tenuous. For example, a grant by a private foundation to a § 509(a)(1), (2), or (3) organization will not be an act of self-dealing merely because one of the § 509(a)(1), (2), or (3) organization's officers, directors, or trustees is also a manager of or a substantial contributor to the foundation.

Section 53.4946-1(a)(8) provides that for purposes of § 4941 only, the term "disqualified person" shall not include an organization described in § 501(c)(3) (other than an organization described in § 509(a)(4) – which pertains to an organization organized and operated exclusively for testing for public safety).

Rev. Rul. 75-42, 1975-1 C.B. 359, holds that a grant by a private foundation to a public charity for its exempt purposes does not constitute an act of self-dealing within the meaning of § 4941 even though two individuals serve as trustees of both organizations. The ruling holds that any benefit to disqualified persons (two trustees herein) is incidental or tenuous under the provisions of § 53.4941(d)-2(f)(2).

Analysis:

Section 4941(a) imposes an excise tax on each act of self-dealing between a disqualified person and a private foundation. Under § 4946(a)(1), a disqualified person for the purpose of § 4941 means, with respect to a private foundation, a person who is a substantial contributor to the foundation, a foundation manager, an owner of more than 20 percent of the total combined voting power of a corporation which is a substantial contributor to the foundation, a member of the family of any individual described above, or a corporation in which persons described above own more than 35 percent of the total combined voting power. Section 507(d)(2) defines a substantial contributor as any person who contributed or bequeathed an aggregate amount of more than \$5,000 to a private foundation, if such amount is more than two percent of the total contributions and bequests received by the foundation before the close of the taxable year of the foundation in which the contribution or bequest is received by the foundation from such person. University and Healthcare are both exempt from tax under § 501(c)(3). Person 2 is a disqualified person with regard to you as the child of your founder, and Person 1 is a disqualified person with regard to you as the spouse of Person 2, both pursuant to §§ 4946(a)(1)(D) and 4946(d). However, you state that neither Person 1 nor Person 2 is a disqualified person with regard to University or Healthcare.

Your proposed grant to Healthcare and your pledged grant to University would be considered acts of self-dealing if you gave the grants to be used by or for the benefit of a disqualified person. Your grants, however, will be made to organizations which are exempt under § 501(c)(3) and described in § 509(a)(1) and § 509(a)(3). Neither

Healthcare nor University is a disqualified person with respect to you pursuant to § 53.4946-1(a)(8). Therefore, unless the grants may be used indirectly to benefit a disqualified person, neither your proposed grant to Healthcare nor your pledged grant to University will constitute an act of self-dealing under § 4941(d)(1).

Your proposed grant to Healthcare will be made expressly for the purposes of building the research center, and therefore cannot be used, directly or indirectly, for payment of compensation or other benefits of Person 1.

As your foundation manager, Person 2 has authority in the disposition of your pledged grant to University. However, University has pledged that the grant to University will have no effect now or in the future on Person 1's employment with University or with the salary, compensation or any bonuses paid to Person 1, and that, further, Person 1 will not derive any benefit from the grant that he would not otherwise receive. You have represented that neither Person 1 nor any other disqualified person with respect to you is in a position to exercise substantial influence over University's affairs or expenditures, and that no other disqualified person with respect to you is a director, officer, or employee of University. In addition, you have represented that University's annual operating budget is approximately \$x. Therefore, it appears that University has sufficient assets to pay any compensation and benefits owed to Person 1 without regard to the grant funds.

Because neither Healthcare nor University is a disqualified person with respect to you, and because the grants to Healthcare and University will not be used either directly or indirectly to pay compensation or other benefits of a disqualified person, the grants will not constitute acts of self-dealing within the meaning of § 4941(d)(1). Any benefit to either Person 1 or Person 2 from the grants would be incidental or tenuous.

Rulings:

Accordingly, based on the facts and circumstances discussed above, we rule as follows:

1. A proposed grant by you of \$x to Healthcare to build a \$y facility to be built on the campus of University, which would be owned by University and partially staffed by both Healthcare and University, will not result in self-dealing (to the extent it inures to the benefit of University) as defined in § 4941 and the regulations thereunder; and
2. A pledged grant of \$z by you to University will not result in self-dealing as defined in § 4941 and the regulations thereunder.

These rulings are based on the facts as they were presented and on the understanding that there will be no material changes in these facts. Any changes that may have a bearing upon your tax status should be reported to the Service. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Except as we have specifically ruled herein, we express no opinion as to the consequences of this transaction under the cited provisions or under any other provision of the Code.

This ruling will be made available for public inspection under § 6110 after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. § 6110(k)(3) provides that it may not be used or cited as precedent.

If there are any questions about this ruling, contact the person whose name and telephone number are shown in the heading of this letter.

Enclosure
Notice 437

Sincerely yours,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2